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MORTGAGE BANKERS ASSOCIATION

October 2, 2025

Local Rules Committee
U.S. Bankruptcy Court
P.O. Box 26100
Greensboro, NC 27420-6100
ncmbml_localrules@ncmb.uscourts.gov

Re: Comments to the Proposed Changes to M.D.N.C. Local Bankruptcy Rules

Dear Local Rules Committee Members,

The Mortgage Bankers Association (MBA)[1] and its member companies appreciate the opportunity to offer comments on the recent proposed revisions to Local Bankruptcy Rule 4001-1(e) & (f) (the "Proposed Rule"), and proposed revisions to Section 8.3(d) of the Model Plan (the "Proposed Plan" and together with the Proposed Rule, the "Proposed Revisions")[2].

Our organizations appreciate and share the Court's ultimate objective — helping customers navigate the complexities of bankruptcy through greater access to information and payment channels. However, the Proposed Revisions are at odds with the comprehensive federal consumer protection rules for residential mortgage borrowers, will provide the debtors with inconsistent information, and will be impossible to implement on a single bankruptcy district basis. A local rules regime is not the appropriate means of accomplishing these goals as it relates to the topics covered in this response. That said, we would welcome the opportunity to enter into a more detailed discussion and dialogue on how to meet the Court's objectives.

As discussed in greater detail below, in the wake of the 2008 financial crisis, the federal Consumer Financial Protection Bureau (CFPB) engaged in comprehensive rulemakings

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 275,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of more than 2,000 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

[2] MBA recognizes that other subsections of Rule 4001-1 are revised, as are other Local Rules, as well as several new Local Rules. Our comments are limited to the proposed revisions to Local Bankruptcy Rule 4001-1(e) & (f), and the corollary changes to the Proposed Plan.

under the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA). These rulemakings were highly negotiated by stakeholders, and addressed, among other things, how mortgage servicers should service borrower accounts, including borrowers who are delinquent or are debtors in bankruptcy cases. While building the complex systems to comply with the new rules was extremely expensive for the industry, the rules created a national standard for how and when residential mortgage servicers need to communicate with borrowers who have sought bankruptcy relief.

We are very concerned about the practical implications of a district making changes on a local rules basis that will create a fragmented rule structure which will only make it harder for mortgage servicers to build and maintain strong compliance with these national standards. If the rules governing the servicing of debtors' residential mortgage loans are to be revised, it is critical that the process for developing any new requirements be undertaken in a careful, deliberative manner with substantial opportunity for industry input and a discussion about the impacts and obstacles industry will face in complying with them. Additionally, any new rules should have a uniform national effect so servicers are not faced with the specter of complying with multiple different standards among the many districts that could impose their own local rules on the same topic.[3]

The Proposed Revisions Are Not Consistent With Federal Consumer Protection Requirements

The Proposed Revisions create considerable incongruity with federal statutory and regulatory requirements. Congress has established a robust legal framework governing servicer interactions with borrowers. *See e.g.*, 12 U.S.C. § 2601 *et seq.* (RESPA); 15 U.S.C § 1601 *et seq.* (TILA); 15 U.S.C. § 1692 *et seq*. (FDCPA); 12 U.S.C. § 5512(b)(4) (vesting regulatory authority over these matters to the CFPB). The CFPB has also issued detailed, prescriptive requirements in Regulation F, X, and Z (12 C.F.R. §§ 1006, 1024, 1026) governing mortgage payments, periodic statements, and servicer communication with customers.[4]

The Proposed Revisions appear to conflict with at least four CFPB regulations:

1. The Proposed Rule's requirement that a secured creditor "send to the debtor the same monthly account statements that it sends to its non-bankruptcy customers" would require servicers to violate bankruptcy-specific statement requirements in 12 C.F.R. § 1026.41(f), which provide for modified statements under certain circumstances;

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[3] MBA also believes that the Proposed Revisions may extend beyond the District's unquestioned governance over forms, practice, and procedure by creating substantive rights that are contrary to federal lending and consumer regulations, but we have chosen to discuss in this letter the conflict between the Proposed Revisions and such regulations and suggest further substantive discussions rather than to submit a legal memorandum addressing the possible violation of the Rules Enabling Act, 28 U.S.C. § 2071.

[4] Substantive regulations issued by an agency pursuant to statutory authority have the force and effect of law. *See Chrysler Corp. v. Brown*, 441 U.S. 281, 302 (1979).

2. The Proposed Rule's implication in L.B.R. 4001-1(e)(3) that a servicer can choose to "not provide the payment coupons, paper statements, or online statements" identified in (e)(2) contradicts the mandatory statement requirements of 12 C.F.R. § 1026.41;
3. The Proposed Plan's requirement that lenders "maintain the Debtor's online access to the mortgage account to make online payments" appears to contradict 12 C.F.R. § 1026.36(c)(1)(iii), which permits a servicer to "specify in writing requirements for the consumer to follow in making payments"; and
4. The Proposed Revisions do not allow for debtors to *cease* receiving statements and correspondence—a frequent request as it relates to surrendered collateral—in violation of 12 C.F.R. § 1026.41(e)(5) and 12 C.F.R. § 1006.6(c).

The Proposed Revisions' inconsistency with the uniform federal rules established by the CFPB in the wake of the financial crisis requires careful attention.

In addition to the noted friction with the post financial crisis servicing rules currently in effect, the Associations are concerned that the Proposed Revisions would grant debtors in bankruptcy cases new substantive rights to make payments, receive communications, and access websites. While these proposed rights (proposed in the form of creating special duties for secured creditors) may have merit from a consumer protection standpoint, the Associations are concerned that it may not be appropriate to create them through the adoption of the District's local rule for Fed. R. Bankr. P. 4001.

The Rule Would Open a Pandora's Box of Unintended Consequences, Including Debtor Confusion and Servicer Liability

When a creditor receives notice that an account is subject to a bankruptcy case, it typically places a bankruptcy tag on the account's profile. That tag, in turn, impacts many automated downstream processes, including how customers access their accounts and receive periodic statements, with specialized forms and technology developed over many years to ensure compliance with a complex web of federal and state laws, including the Bankruptcy Code. Setting aside the merits of the Proposed Revisions, unwinding those processes to enable servicers to comply with laws, rules, and regulations across all jurisdictions, and in a manner that is technologically sustainable and error-free, simply cannot be done with the flip of a switch (particularly for smaller servicers).

The practical impact is that servicers, who must provide "online access to the debtor's account(s) in the same manner as existed prepetition" under Proposed Rule 4001-1(e)(2)), will provide ***contractual*** information rather than bankruptcy-specific information. That is so for two reasons — one, it is needed to comply with the "same manner" provision of the Proposed Rule; and two, it is the only manner of providing information given most servicing systems' capabilities. Servicers also will struggle to provide different levels of access based on the district in which the filer's case was filed. And even servicers who may find a way to limit this requirement to the M.D.N.C. would be hard-pressed to tailor it to the specific

subset of bankruptcy accounts covered by the Proposed Rule — those in which the servicer "is not receiving disbursements on its claim from the trustee" (*id.*).[5]
What can be expected to happen if servicers provide "online access to the debtor's account(s) in the same manner as existed prepetition"? Among the likely unintended consequences:

- Debtors who were delinquent at the time of filing will see delinquency messages based on prepetition contractual information indicating past due payments and which could be potentially challenged as inconsistent with the automatic stay;
- Debtors who seek to pay online may make payments that are inconsistent with amounts due under their confirmed chapter 13 plan, or duplicative with amounts paid by the trustee; and,
- Marketing and credit offers may be provided that are unsuitable for borrowers in bankruptcy, allowing them (or encouraging them) to incur new debt while the bankruptcy case is ongoing.

Also of particular concern, the Proposed Revisions, unlike 12 C.F.R. §1026.41(e)(5)(iv)(B), do not allow servicers ***time*** to update accounts to reflect the filing of a bankruptcy case, appearing to apply instantaneously once the petition is filed. For many accounts, servicers must first calculate the pre-petition amounts due prior to determining an ongoing post-petition obligation. Fed. R. Bankr. P. 3002 allows seventy days to calculate such amounts, which are unknowable prior to plan confirmation. Forcing servicers post-bankruptcy filing to simply open up their systems as they were prior to the bankruptcy will reveal non-bankruptcy information that is likely to confuse debtors.

Servicers likely also would face risk in other venues that may construe servicers' provision of online access to contractual information as a violation of non-bankruptcy law irrespective of this District's requirements.Indeed, compliance with the Proposed Revisions could subject the creditor to governmental enforcement risks. For example, in *In re Vystar Credit Union*, File No. 2024-CFPB-0013 (2024),[6] the CFPB alleged that a financial institution, in providing an online access platform, (1) did not properly account for system conversion risks; (2) had a rushed implementation timeline; (3) failed to have contingencies in place in case of disruptions; and (4) failed to perform sufficient testing that would identify critical defects. The digital process changes that the Proposed Revisions would require take time and would create risk of regulatory enforcement actions such as this — which resulted in a $1.5 million penalty against the credit union in that matter.

Recognizing the Court's laudable intentions to improve the servicing experience for customers who have sought bankruptcy relief, the practical reality is that creditors cannot viably alter access and noticing to account holders solely within the jurisdiction of the

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[5] Further, the Proposed Revisions would provide automatic stay and discharge injunction protection only for this discrete subset of debtors, namely —chapter 13 filers whose "… plan does not provide for disbursements to a secured creditor by the trustee on account of its claim". Proposed Rule 4001-1(f)(3); see also Proposed Plan 8.3(d) (providing chapter-13-specific protections). These sorts of granular distinctions are unworkable in most lenders' systems of record.
[6] This Consent Order is available at https://files.consumerfinance.gov/f/documents/cfpb-vystar-credit-union-consent-order_2024-10.pdf.

District let alone the subset subject to the Proposed Revisions. The likely result is debtor confusion combined with litigation and regulatory enforcement risk to servicers, in and far beyond the District.

The Timeframe under which Local Rules are Typically Enacted is Not Commensurate with the Complexity of Online Access and Payment Portal Requirements

Setting aside the above-noted reasons not to proceed with the Proposed Revisions, if the District were to proceed with them it would require an extended implementation timeframe. Under what appears to be a typical timeframe, the Proposed Revisions would go into effect thirty days after the Court approves the revisions as amended.[7] While that may be realistic for the other provisions of the Local Rules concerning court administration, it is not workable with respect to online access and payment provisions. Parties subject to the changes must be given adequate time to understand them, operationalize them, and ensure their ability to comply with them.

To use an example familiar to the court system, suppose that PACER were required to undergo a major functionality enhancement. That would not happen in a matter of weeks; it would take many months — probably years — of requirements gathering, development, and testing. And it would happen nationwide, not jurisdiction-by-jurisdiction. Now imagine that manner of development work occurring at hundreds of lenders, each with its own systems and protocols. This simply is not the sort of task that can be accomplished in a month or two.[8]
Because the Proposed Revisions requiring online functionality do not appear to allow adequate time for implementation, the online access and payment portions of the Proposed Revisions should be withdrawn.

The Proposed Rule and Proposed Plan are Internally Inconsistent

For the reasons above, we believe the best course of action is for the Court to retract those parts of the Proposed Revisions that would impact servicing systems' online functions. However, should the Court press ahead, it should at minimum ensure full consistency between the Proposed Rule and the Proposed Plan, which conflict in at least 2 ways:

- While the Proposed Plan recognizes that periodic statements in bankruptcy must comply with 12 C.F.R. § 1026.41 and its bankruptcy-specific provisions, the

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[7] This presumed thirty-day window is based on how the Court proposed to implement its initial revisions to the Plan before reconsidering, revising the Plan, and soliciting a revised version of the Plan for additional comments.
[8] This is perhaps best exemplified by the federal judiciary's own implementation of CM/ECF. While implementation was expected to take between three-to-five years, it took more than ten years to complete. *See* Greenwood & Bockweg, Intl. J. for Ct. Admin. (June 2012) and Bockweg, Discussion Draft prepared for AOUSC (March 1997), respectively available at https://iacajournal.org/articles/74/files/submission/proof/74-1-164-1-10-20131023.pdf and https://ntrl.ntis.gov/NTRL/dashboard/searchResults/titleDetail/PB99151243.xhtml.

Proposed Rule would require servicers to violate this regulation by providing "the same monthly account statements that it sends to its non-bankruptcy customers";

- The Proposed Rule would allow servicers to substitute statements or online access with a "telephone number or other means to access account information"; the Proposed Plan does not.[9]

Court mandates must be clear and definite enough for the parties whose activities are regulated to avoid guesswork or choosing which provision to comply with. Due process requires that a law provide fair warning and provide "persons of ordinary intelligence a reasonable opportunity to know what is prohibited [or required], so that he may act accordingly." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). In this case, the Proposed Revisions must be reconciled with one another in a manner that affords servicers a meaningful opportunity to understand what is required, in a consistent manner.

MBA Commends Language Limiting Automatic Stay and Discharge Injunction Risk, Which May Incentivize the Voluntary Provision of Online Access

Although our organizations do not support Local Rules that *mandate* online access, we do favor provisions *incentivizing* servicers to provide online access. Providing information to help customers understand their loan terms and make payments should not require servicers to risk sanctions for violating various provisions of the Bankruptcy Code. The kinds of protection that the Proposed Revisions provide against such liability are an important component of moving toward expanded online access, and retaining parts of the Proposed Revisions that provide these protections would be a useful first step in this direction. [10] It may encourage servicers to make efforts toward providing greater online access in a way that minimizes customer confusion and consternation.[11] Therefore, should the Court propose any Local Rules or plan provisions that concern online access, MBA would urge it not to make such rules mandatory, but rather to provide simply that information that servicers provide online does not constitute a violation of the automatic stay, plan confirmation order, or the discharge injunction.

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[9] As stated above, 12 C.F.R. § 1026.41 requires servicers to send period statements to customers in bankruptcy, negating the Rule's implication of servicer choice for all but "Small servicers" as defined under 12 C.F.R. § 1026.41(e)(4).

[10] For example the Proposed Rule's provisions that providing online access does not "violate the automatic stay or the discharge injunction", and the Proposed Plan's statement that "the provision of online account access shall [not] be deemed a violation of the automatic stay imposed by 11 U.S.C. § 362(a), nor shall it constitute an act to collect a debt prohibited by 11 U.S.C. § 524 or other provisions of the Bankruptcy Code or non-bankruptcy law", are sensible means to encourage servicers to voluntarily provide some level of online access.

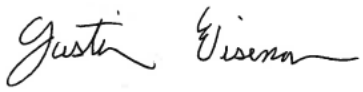
[11] One can imagine servicers, with time to build and test, developing a simplified platform that would allow customers to review a .pdf copy of their account statement (as generated for bankrupt debtors) and submit payments, uniformly across jurisdictions, with nationwide procedures and protocols for ensuring these enhancements do not trigger litigation risk.

Conclusion

MBA appreciates the Court's efforts to improve the bankruptcy process and support measures that enhance transparency and communication for debtors. However, we believe that the Proposed Revisions conflict with other federal law, are not operationally feasible, and would sow considerable confusion and legal risk for servicers in addition to being internally inconsistent. We urge the Court to withdraw or substantially revise the Proposed Rule and Proposed Plan to address the concerns outlined above, and to work collaboratively with stakeholders across all jurisdictions to develop rules that are legally sound, practical, beneficial to all parties—with recognition of the timeframe it will take to make this far-reaching vision a reality. We look forward to participating in that important dialogue.

We thank you for your consideration of these very important issues and are available to discuss these matters upon request.

Respectfully,



Justin Wiseman
Vice President for Residential Policy and
Managing Regulatory Counsel
Mortgage Bankers Association
jwiseman@mba.org